

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA

IN THE MATTER OF:) CASE NO.: 03-07132-8-JRL
)
CARL SHELDON RALPH) CHAPTER 7
KIMBERLY JO RALPH)
)
DEBTORS)

**MOTION FOR PUBLIC SALE OF PERSONAL CERTAIN PROPERTY ASSETS
FREE AND CLEAR OF LIENS AND AUCTIONEER COMPENSATION**

NOW COMES Joseph N. Callaway, Attorney for Trustee and shows the Court:

1. Debtors filed a petition under Chapter 7 of the Bankruptcy Code on August 14, 2003.
2. This Motion is filed under 11 U.S.C. Section 363 and Bankruptcy Rules 6004 and 6007 to sell certain personal property free and clear of liens and encumbrances. It is a core proceeding pursuant to 28 U.S.C. Section 157. This Court has jurisdiction over this matter.
3. Among Debtor's assets to be sold in this proceeding are video game assets from the Debtors' pre-petition business known as Fox's Pizza Den. A list of the assets is attached hereto as Exhibit A. Restaurant equipment of the Debtors used in the same business was sold at private sale to Debtors' landlord pursuant to the Court's order of December 8, 2003. However, the video equipment in Exhibit A was not the subject of and therefore was not sold under the prior order.
4. A list of creditors known to the Trustee who may assert liens upon the subject property is attached as Exhibit B and incorporated by reference.
5. The Trustee is informed and believes that the best method of preserving the rights of proper lien creditors and the equity in the described property, if any, will be to sell the same at public auction free and clear of all liens and claims pursuant to 11 U.S.C. §363.
6. The proceeds from the sale of the identified assets will be distributed first to the pro rata costs of the sale including auctioneer's commission and the Trustee's Section 506(c) fees if any. The remaining sum attributable to pledged items will be distributed to the appropriate lienholders in their relative order of priority upon allowed claims. Auctioneer compensation will be sought at the scale previously approved by the Court or as may be allowed by Local Rule.
7. The claims of purported secured creditors shall be transferred to the proceeds

of sale in order of priority, but subject to any objections the Trustee may have. The balance, if any, will be paid into the bankruptcy estate for proper distribution therein as may be consistent with the future orders of this estate.

8. The Trustee reserves all rights to object to the claims of the referenced lien claimants listed in Exhibit B or otherwise existing.

9. The Trustee previously filed an application with the court to approve the employment of Country Boys Auction and Realty Co., Inc., and Douglas Gurkins as Auctioneer, which was granted. For this sale, the Auctioneer's aggregate compensation and reimbursement of expenses shall be in the fixed amount of 15% pursuant to Local Rule 6005--1(a).

WHEREFORE, the Trustee in this Bankruptcy Case moves:

1. That the Court enter an Order directing the sale at public auction of the described property free and clear of all liens claimed by other parties pursuant to 11 U.S.C. §363, with the lien of any proper and valid secured claimants to transfer to the net proceeds of sale subject to existing or future objections of the Trustee.

2. That properly secured creditors be ordered to take payments in such an amount as the Court fixes as satisfaction of their liens.

3. That the costs of sale, including such fees as may be allowed the Auctioneer and the Trustee under 11 U.S.C. §506(c) be first paid from the proceeds, but subject to the further approval of the Court.

4. For such other and further relief as may be required.

DATED: January 7, 2004

s/Joseph N. Callaway
Joseph N. Callaway
State Bar No. 010821
BATTLE, WINSLOW, SCOTT & WILEY, P.A.
Attorneys for Trustee
Post Office Box 7100
Rocky Mount, NC 27804-0100
(252) 937 2200

EXHIBIT A

VIDEO GAME ASSETS

1. Digital Scale
2. Tokens/Tickets
3. Prizes (small toys)
4. (2) Token Machines
5. Homerun Hitter
6. Wacky Gator
7. Cyclone
8. Dinoscree
9. Smokin= Token
10. Round >N= Round
11. Big Haul
12. Mouse Attack
13. Spider Stompin=
14. Rock N= Bowl
15. Smart Toss >Em
16. WCW Car
17. High Tops
18. Full Court Fever
19. (3) Lighting Skee Ball
20. (2) Super Shoe Basketball
21. Mini Dunx
22. Barnyard Babies
23. Indy 500
24. Star Wars Trilogy Arcade
25. Q Zap (Joy Stand)
26. Rabbit Racin=
27. (2) Vacuum Cleaners

EXHIBIT B

SECURED CREDITOR	DESCRIPTION OF ALLEGED LIEN
<p>Internal Revenue Service Attn: Special Procedures Staff 320 Federal Place Greensboro, NC 27402 - and - United States Attorney - EDNC Attn: Civil Process Clerk 310 New Bern Avenue Suite 800, Federal Building Raleigh, NC 27601-1461 - and - Office of the Attorney General Department of Justice 10th St. & Constitution Ave. Washington, DC 20530</p>	<p>Any and all tax liens of record or otherwise claimed, exact amount unknown.</p>
<p>North Carolina Dept of Revenue Attn: Manager/Agent Office Services Division Bankruptcy Unit P.O. Box 1168 Raleigh, NC 27602-1168 - and - North Carolina Dept of Revenue c/o N.C. Dept of Justice P.O. Box 629 Raleigh, NC 27602-0629</p>	<p>Any and all tax liens of the State of North Carolina on record or otherwise claimed, exact amount unknown.</p>
<p>Wells Fargo Commercial Attn: Manager/Agent 3118 North Croatan Hwy, Suite 204 Kill Devil Hills, NC 27948</p>	<p>Any and all judgments, liens or claims of any nature as may appear of record at the Pasquotank County Registry and Office of the Clerk of Superior Court, or otherwise appearing under law or equity.</p>
<p>Carl Sheldon Ralph Kimberly Jo Ralph 403 Jessup Street Elizabeth City, NC 27909 - and - Herbert T. Mullen, Jr. Attorney for Debtors P.O. Box 365 Elizabeth City, 27907</p>	<p>Any and all property rights in the above described property, and any and all exemptions that Debtors may now or hereinafter claim in the same.</p>

*Sale shall be free and clear of any other liens of these listed creditors that may not be described herein.

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CARL SHELDON RALPH)	CHAPTER 7
KIMBERLY JO RALPH)	
)	
DEBTOR(S))	

**NOTICE OF MOTION FOR PUBLIC SALE OF PERSONAL CERTAIN
PROPERTY ASSETS FREE AND CLEAR OF LIENS; NOTICE OF SALE AND
AUCTIONEER COMPENSATION**

TO: Carl Sheldon Ralph and Kimberly Jo Ralph, Debtors; Herbert T. Mullen, Jr., Attorney for Debtors; Indenture Trustees, and Secured Creditors

NOTICE IS HEREBY GIVEN in accordance with Bankruptcy Rules 2002(a), 6004 and 6007 and 11 U.S.C. §363 of the Motion For Sale of Personal Property Free and Clear of Liens (the "Motion") filed simultaneously herewith by Joseph N. Callaway, the Chapter 7 Trustee, in the above-referenced case seeking an order approving the sale at public auction of all video game assets from the Debtors' pre-petition business known as Fox's Pizza Den (a list thereof being attached to the Motion as Exhibit A) free and clear of all liens of any party pursuant to 11 U.S.C. §363 with liens to transfer to net sale proceed and subject to objections of the Trustee. The public sale will be held on February 12, 2004 at 10:00 a.m. or soon thereafter as possible at the business location of the Debtor known as Fox's Pizza Den located in Elizabeth City, NC. The Court approved Auctioneer in this case is Country Boys Auction and Realty Co., Inc. For this sale, the Auctioneer's aggregate compensation and reimbursement of expenses shall be fixed at 15% of the gross sale proceeds in accord with Local Rule 6005-1(a).

FURTHER NOTICE IS HEREBY GIVEN that this Motion may be allowed provided no response and request for a hearing is made by the Debtor, Trustee or other parties in interest in writing to the Clerk of this Court within **FIFTEEN (15) DAYS** for the date of this notice; and

FURTHER NOTICE IS HEREBY GIVEN that if a response and a request for hearing is filed by the Debtor, Trustee, or other parties in interest named herein in writing within the time indicated, a hearing will be conducted on the Motion and response thereto at a date, time and place to be later set by this Court and all interested parties will be notified accordingly. If no request for a hearing is timely filed, the Court may rule on the Motion and response thereto ex parte without further Notice.

DATE OF NOTICE: January 7, 2004

/Joseph N. Callaway
Joseph N. Callaway
State Bar No. 010821
BATTLE, WINSLOW, SCOTT & WILEY, P.A.
Attorneys for Trustee
Post Office Box 7100

Rocky Mount, NC 27804-0100
(252) 937-2200

CERTIFICATE OF SERVICE

I, Joseph N. Callaway, Attorney for Trustee in this action, hereby certify that on the 7th day of January, 2004, I served the documents to which this certificate is attached:

MOTION FOR PUBLIC SALE OF PERSONAL CERTAIN PROPERTY ASSETS FREE AND CLEAR OF LIENS AND AUCTIONEER COMPENSATION

by depositing a copy thereof postpaid in a post office or official depository under the exclusive care and custody of the United States Postal Service, in a wrapper, addressed to each of the following parties of interest in this action at the following last known addresses:

Ms. Marjorie K. Lynch Bankruptcy Administrator Eastern District of North Carolina P.O. Box 3758 Wilson, NC 27895-3758	Internal Revenue Service Attn: Special Procedures Staff 320 Federal Place Greensboro, NC 27402
United States Attorney - EDNC Attn: Civil Process Clerk 310 New Bern Avenue Suite 800, Federal Building Raleigh, NC 27601-1461	Office of the Attorney General Department of Justice 10th St. & Constitution Ave. Washington, DC 20530
North Carolina Dept of Revenue Attn: Manager/Agent Office Services Division Bankruptcy Unit P.O. Box 1168 Raleigh, NC 27602-1168	North Carolina Dept of Revenue c/o N.C. Dept of Justice P.O. Box 629 Raleigh, NC 27602-0629
Wells Fargo Commercial Attn: Manager/Agent 3118 North Croatan Hwy, Suite 204 Kill Devil Hills, NC 27948	Carl Sheldon Ralph Kimberly Jo Ralph 403 Jessup Street Elizabeth City, NC 27909
Herbert T. Mullen, Jr. Attorney for Debtors P.O. Box 365 Elizabeth City, 27907	

s/Joseph N. Callaway
Joseph N. Callaway
State Bar No. 010821
BATTLE, WINSLOW, SCOTT & WILEY, P.A.

Attorneys for Trustee
Post Office Box 7100
Rocky Mount, NC 27804-0100

CERTIFICATE OF SERVICE

I, Joseph N. Callaway, Attorney for Trustee in this action, hereby certify that on the 7th day of January, 2004, I served the documents to which this certificate is attached:

NOTICE OF MOTION FOR PUBLIC SALE OF PERSONAL CERTAIN PROPERTY ASSETS FREE AND CLEAR OF LIENS; NOTICE OF SALE AND AUCTIONEER COMPENSATION

by depositing a copy thereof postpaid in a post office or official depository under the exclusive care and custody of the United States Postal Service, in a wrapper, addressed to each of the following parties of interest in this action at the following last known addresses:

SEE ATTACHED MAILING MATRIX

s/Joseph N. Callaway
Joseph N. Callaway
State Bar No. 010821
BATTLE, WINSLOW, SCOTT & WILEY, P.A.
Attorneys for Trustee
Post Office Box 7100
Rocky Mount, NC 27804-0100
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